

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Sotelo Car Care, Inc.,

Complainant,

vs.

Nextel of California, Inc.

Defendant.

(ECP)
Case 04-10-027
(Filed October 20, 2004)No Appearance for Complainant.
Chanda LeVasseur, for Defendant.**OPINION DENYING RELIEF**

Complainant alleges that it has a contract with Nextel of California, Inc., signed in 1997, which provides for a \$99 a month rate plan for each of two cellular phones, and which has no expiration date. Complainant alleges that defendant, without complainant's consent, changed the rate plan to a more expensive plan. Complainant seeks enforcement of its 1997 contract which it believes provides unlimited incoming and outgoing calls at \$99 per month for each of its two cellular phones. Complainant seeks a refund for overpayment. Defendant denies the allegations.

Public hearing was set for February 18, 2005 in Los Angeles at which time defendant appeared ready for hearing. At the hearing the Presiding

Administrative Law Judge (ALJ) received a message from the Commission's Calendar Clerk stating that complainant called at 9:35 a.m. requesting a continuance because her mother died the previous night.

Defendant's witness had come from New Jersey to attend the hearing and objected to a continuance. The ALJ decided, pursuant to CCP § 596,¹ to postpone the hearing but take the testimony of the witness. The witness introduced Exhibit 1, a history of complainant and defendant's business relationship. Briefly, that exhibit and the witness' testimony showed that between August 14, 1997, when complainant entered into an agreement with defendant, and the date of the hearing, there had been at least nine changes in the terms of the agreement between the parties. The witness testified that all of these changes were with the consent of the complainant.

On May 17, 2005, the ALJ issued a Ruling which stated, in part:

I have read the complaint and the defendant's Exhibit 1, and am prepared to make my recommendation on disposition to the Commission based on the proceedings to date. If complainant desires to present evidence, I will reset a hearing but will not require the attendance of defendant. Defendant's testimony is received. Complainant shall inform me in writing by June 10, 2005 if it desires a hearing, otherwise the case will be submitted on the proceedings to date.

¹ **§ 596. Deposition of witness in case of postponement**

The party obtaining a postponement of a trial, if required by the adverse party, must consent that the testimony of any witness of such adverse party, who is in attendance, be then taken by deposition before a judge or clerk of the court in which the case is pending, or before such notary public as the court may indicate, which must accordingly be done; and the testimony so taken may be read on the trial, with the same effect, and subject to the same objections, as if the witnesses were produced.

Complainant failed to respond to the ALJ's Ruling, therefore the case is submitted on the record and the relief requested is denied.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Robert Barnett is the assigned ALJ in this proceeding.

O R D E R

IT IS ORDERED that:

1. The relief requested by the complainant is denied.
2. Case 04-10-027 is closed.

This order is effective today.

Dated _____, at San Francisco, California.